

No. 10-0001

IN THE SPECIAL COURT OF REVIEW

Inquiry Concerning a Judge, No. 96

**APPENDIX VOLUME II
IN SUPPORT OF MOTION TO DISMISS
OF THE HONORABLE SHARON KELLER**

Charles L. Babcock
State Bar No. 01479500
1401 McKinney, Suite 1900
Houston, Texas 77010
(713) 752-4200
(713) 752-4221 – Fax
Kurt Schwarz
State Bar No. 17871550
901 Main St., Ste. 6000
Dallas, Texas 75202
(214) 953-6000
(214) 953-5822 – Fax
**ATTORNEYS FOR THE
HONORABLE SHARON KELLER**

No. 10-0001

IN THE SPECIAL COURT OF REVIEW

Inquiry Concerning a Judge, No. 96

**APPENDIX VOLUME II
IN SUPPORT OF MOTION TO DISMISS
OF THE HONORABLE SHARON KELLER**

- U. Excerpts from the Testimony of Judge Sharon Keller at the Hearing Held Before the Appointed Special Master on August 19, 2009

Exhibit U

INQUIRY CONCERNING JUDGE,

NO. 96

VOLUME 4 OF 7

IN RE:

*

*

THE HONORABLE SHARON KELLER,

*

PRESIDING JUDGE OF THE TEXAS

*

HEARING HELD BEFORE

COURT OF CRIMINAL APPEALS,

*

THE APPOINTED SPECIAL

AUSTIN, TRAVIS COUNTY, TEXAS

*

MASTER

On the 19th day of August, 2009, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable David A. Berchelmann, Jr., Judge presiding, held in San Antonio, Bexar County, Texas:

Proceedings reported by computerized stenotype machine.

COPY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

VOLUME 4

HEARING BEFORE SPECIAL MASTER

August 19, 2009				Page	Vol.
Examiner Rests.....				158	4
Court Reporter's Certificate.....				159	4
EXAMINER'S WITNESSES	Direct	Cross	Voir Dire		Vol.
Hon. Sharon Keller	31	3,59			4
Ed Marty (By Video)	61,135	92,152			4

ALPHABETICAL INDEX

	Direct	Cross	Voir Dire	Vol.
Hon. Sharon Keller	31	3,59		4
Ed Marty (By Video)	61,135	92,152		4

EXHIBIT INDEX

Examiner's	Ex. No.	Description	Offered	Admitted	Vol.
	32	V.T.C.A.			
		Section 441.183	10	10	4
	33	Resp.'s Motion			
		to Dismiss	23	24	4
Respondent's	Ex. No.	Description	Offered	Admitted	Vol.
	47	TRAP 9.2			
		Keller 000006	29	31	4
	48	Gov't Code Sec.			
		658.005			
		SCJC000114	29	31	4
	63	Invoice, Bone			
		Computer			
		SHIRK 000081-83	29	31	4
	64	DWQ of Bayou			
		City Connected	29	31	4
	65	DWQ of Internet			
		America, Inc.	29	31	4

1 THE COURT: Be seated, please.

2 Okay, you may resume, Mr. McKetta.

3 MR. McKETTA: Thank you, Your Honor.

4 Your Honor, Judge Keller.

5 HON. SHARON KELLER,

6 having been previously duly sworn, testified further as follows:

7 CROSS-EXAMINATION (CONT'D)

8 BY MR. McKETTA:

9 Q. May I ask you some questions about Ed Marty?

10 A. Okay.

11 Q. You perceived that he felt very loyal to you, did you
12 not?

13 A. I -- he was loyal to me.

14 Q. Yes. And you are aware, are you not, that Ed Marty
15 looked to you as his supervisor.

16 A. I think he looked to the nine judges as his supervisors.

17 Q. He certainly would report and comply with direction from
18 any of the nine judges, they were all his bosses, were they not?

19 A. Yes.

20 Q. But aren't you aware that he perceived that you were his
21 supervisor?

22 A. I believe he perceived that Judge Price was his direct
23 supervisor.

24 Q. Are you aware that he perceived that you were the person
25 to whom he had immediate reporting responsibilities?

1 A. I'm not accusing you of mischaracterizing it.

2 Q. On page 24 you remember you and I had a conversation and
3 I asked, You have responsibilities, do you not, to follow the
4 execution day procedures? And you said, To abide by them? And I
5 said, Yes. And you answered, Yes. Is that right?

6 A. That's right.

7 Q. And then I just asked to make clear that we were
8 communicating right, And you personally had that responsibility,
9 as do other members of the court; is that not so? And you
10 agreed, Yes.

11 A. Okay.

12 Q. Would you not agree that part of your duties of office
13 included the responsibility to follow the court's execution day
14 procedures?

15 A. My -- I'm sorry, would you repeat the question?

16 Q. Don't you agree that part of your duties of office as a
17 judge of the Texas Court of Criminal Appeals included, as with
18 other judges, the responsibility to abide by the execution day
19 procedures?

20 A. No, I would say that my responsibility to the other
21 judges required me to abide by the procedures.

22 Q. How did you expect court personnel, including your
23 general counsel, to abide by the execution day procedures in the
24 years -- since you became presiding judge in 2001, how did you
25 expect people to know how to comply with and know about them?

1 THE COURT: That's okay. Received in evidence.
2 Okay, go ahead, Mr. Babcock.

3 MR. BABCOCK: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. BABCOCK:

6 Q. Judge Keller, I want to ask you a little bit about your
7 background.

8 A. Okay.

9 Q. Which we haven't gotten into yet. Can you tell the
10 Court where you were born.

11 A. I was born in Dallas, Texas.

12 Q. Okay, you care to share the year?

13 A. 1953.

14 Q. Younger than I, I'm certain. Were you raised in Dallas
15 as well?

16 A. I was, I grew up in Dallas my whole life.

17 Q. All right. And where did you go to school?

18 A. I went to Greenhill.

19 Q. And I know from my daughters who went to ESD and beating
20 Greenhill like a drum in every sport they played, that's a
21 private prep school in Dallas; correct?

22 A. Yes. Yes, it is.

23 Q. And as I understand it you went there on scholarship?

24 A. Yes, most of the time.

25 Q. And your parents' names?

1 A. I certainly do.

2 Q. You know that the Examiner, the special counsel amended
3 those charges to add an additional canon approximately a month
4 ago; correct?

5 A. Yes, I know that.

6 Q. All right. One of the things that has been discussed in
7 Mr. McKetta's questions of you is the issue of persistent. Do
8 you have an understanding whether or not the charges against you
9 are focused on this single day, September 25th of 2007, and
10 specifically the one- to two-minute conversation that you had
11 with Mr. Marty?

12 A. Yes, that's my understanding.

13 Q. So I'm not going to talk about persistent anymore, I'll
14 talk about the other thing, which is willful. The first charge
15 is that you were guilty of a willful failure to comply with the
16 law citing canon 2A. Let me ask you directly, do you believe
17 that you have failed to comply with the law either willfully or
18 unwillfully?

19 A. I do not.

20 Q. What is the law that you are accused of failing to
21 comply with so far as you understand?

22 A. I believe it's the execution day protocol.

23 Q. That was in effect on September 25th?

24 A. Yes.

25 Q. And that was not in writing?

1 A. No, it was an oral tradition.

2 Q. An oral tradition of the Texas Court of Criminal
3 Appeals?

4 A. Yes.

5 Q. All right. Now, do you believe that this oral tradition
6 that existed on September 25th of 2007 is a court rule, statute,
7 constitutional provision or decisional law?

8 A. I do not.

9 Q. Let me focus on the phrase court rule. Why is the oral
10 tradition later reduced to writing? That the oral tradition of
11 the court protocol on September 25th is not a court rule within
12 the meaning of the canon that you're accused of violating?

13 A. A court rule is something that is promulgated by a
14 Supreme Court or the Court of Criminal Appeals, usually by the
15 Supreme Court that is published for comment and reviewed and then
16 adopted.

17 Q. All right.

18 A. It's -- it goes through a public process.

19 Q. All right. And is part of that public process the well
20 run, well oiled machine of the Texas Supreme Court advisory
21 committee?

22 A. That is a critical part of the process.

23 Q. Thank you. And can you tell the Court whether the Court
24 of Criminal Appeals has general rule making authority as the
25 Supreme Court does?